

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION**

EARNEST J. GRAHAM,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CV422-159
	)	
OFFICER DEVIN O'NEIL, <i>et al.</i> ,	)	
	)	
Defendants.	)	

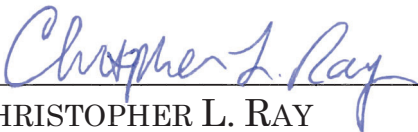
**ORDER**

The defendants in this 42 U.S.C. § 1983 case previously moved to extend the discovery and motions deadlines because *pro se* plaintiff Earnest J. Graham had failed to participate. *See* doc. 20. Plaintiff did not respond meaningfully to that Motion, but, instead, filed a “Motion to Suppress Evidence and Statements.” *See* doc. 21. Not only does his response fail to address defendants’ concerns regarding his failure to participate in discovery, as defendants point out, it has no plausible relevance to this civil case. *See* doc. 22. It is, therefore, **DISMISSED** as moot. Doc. 21. Before the Court could address Graham’s inexplicable conduct, defendants filed a Motion for Summary Judgment, doc. 23, and moved to withdraw their request for an extension, doc. 26. Their request

to withdraw the prior Motion is **GRANTED**. Doc. 26. The Clerk is **DIRECTED** to **TERMINATE** the prior motion, doc. 20, as withdrawn.

Given defendants un rebutted representations concerning Graham's conduct, an additional comment on the pending summary judgment motion is warranted. Defendants have not sought to dismiss Graham's Complaint based on his refusal to participate in discovery, *see, e.g.*, Fed. R. Civ. P. 37, or his general failure to prosecute it, *see, e.g.*, Fed. R. Civ. P. 41(b). However, this Court has the authority to prune cases from its docket where parties have failed to prosecute. *See, e.g., Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962). Graham is advised that failure to respond to a motion for summary judgment is recognized as a failure to prosecute, under Rule 41. *See Wedgeworth v. Corizon Health*, 2013 WL 4791619, at \*1 (S.D. Ala. Sept. 6, 2013). **Graham is advised that failure to *properly* respond to the Motion for Summary Judgment will be construed as failure to prosecute this case and may result in a recommendation of dismissal on that ground alone.**

**SO ORDERED**, this 10th day of March, 2023.

  
CHRISTOPHER L. RAY  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF GEORGIA